IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2182 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMNAGAR DIST. CO.OP.BANK LTD. - Petitioner(s)
Versus
GUJARAT BANK WORKER UNION - Respondent(s)

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Appearance :
MR SHIRISH JOSHI for Petitioner(s) : 1,
None for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 09/03/2006

ORAL JUDGMENT

1. Heard the learned advocate Mr. S.J. Joshi on behalf of the petitioner. In the present petition, the petitioner – bank has challenged the order passed by the Industrial Court, Rajkot, as the Appellate Court in B.I.R. Appeal No.9 of 2005 dated 27th September 2005.

2. Learned advocate Mr. Joshi has submitted that

Appellate Court has committed gross error in deciding the merits of the application without remanding back the matter to the concerned Labour Court.

3. I have perused the order passed by the Appellate Court i.e. Industrial Court No.2, Rajkot in B.I.R. Appeal No.9 of 2005. In paragraph 9 and 10, the Appellate Court has come to the conclusion that after hearing the concerned learned advocates that an original application which was filed by the Union was rejected by the Labour Court only on the ground that approach letter, under Section 42(4) of B.I.R. Act, was not served to the bank. This factual aspect has been made clear by the Appellate Court and come to the conclusion that approach letter under Section 42 Sub-Section 4 of B.I.R. Act was served to the management bank and that was accepted by the bank and by letter dated 3rd January 2005, the bank has refused to accept the demands which were raised by the Union. In view of this factual aspect which has been examined by the Appellate Court the facts that approach letter was served by the Union to the bank and bank has accepted it and refused to accept the demand made by Union. Therefore,

Appellate Court has come to the conclusion that order dated 20.7.2005 passed by the Labour Court, Jamnagar in B.I.R. Application No.1 of 2003 is required to be set aside and keeping in mind that no further financial burden will cause upon the bank, the Industrial Court being an Appellate Court has granted benefit of permanency with effect from 1.9.2005 considering the interim period being a notional period and benefit has been granted with effect from 1.9.2005 and with a direction to the bank to make permanent the workman from the date of joining the service.

4. According to my opinion, the factual aspect has been rightly made it clear by the Industrial Court, for that, learned advocate Mr.Joshi has no objection or no arguments or not challenge this part because before this Court also, the letter dated 3rd January 2003 wherein demand made in approach letter dated 28th December 2002 has been rejected while admitting the facts of receiving the letter dated 28th December 2002 from the Union.

5. In view of this, according to my opinion, Industrial Court has rightly taken care not to impose any further burden upon the bank and

considering the interim period being a notional period and no arrears is required to be paid by the bank to the workman and workmen are entitled for the benefit as permanent employee from 1.9.2005.

6. The submission of Mr.Joshi is that Labour Court has not examined the merits except this factual aspect that approach letter was not served, therefore, Industrial Court should not have to go into the merits without remanding back the matter to the Labour Court. I have considered this submission when Industrial Court cleared the factual aspect which was controversy between the parties before the Labour Court then Appellate Court has rightly grant the relief without remanding back the matter to the Labour Court. It is not necessary that each and every matter require to be remanded back to the concerned Labour Court. If Appellate Court is satisfied on merits, Appellate Court can grant relief while set aside the order passed by the Labour Court. According to my opinion, it is for the Appellate Court to decide whether matter to be remanded or not and Appellate Court has rightly given reason for granting relief in favour of the workman and no financial burden is

lying upon the bank about any arrears of interim period. In view of this, the contentions raised by Mr. Joshi is rejected. There is no error in passing such order. Therefore, no interference is required while exercising the power under Article 227 of the Constitution of India.

8. The petitioner has not raised contentions before the Appellate Court that after clearing the factual aspect, matter may be remanded back to the Labour Court, no such submission was made before the Appellate Court. Therefore such contention cannot be raised before this Court for the first time. Looking to the contentions raised by the petitioner before it, the said order was passed by the Appellate Court. For that, Industrial Court has not committed any error which required interference by this Court while exercising power under Article 227 of the Constitution of India.

9. Hence, there is no substance in the present application. Therefore, this application is dismissed.

[**H.K. RATHOD, J.**]

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